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S.B. CIVIL MISC. APPEAL NO.1291/2007.

Smt. Leela & Ors. Vs. Narain & Ors.

Date of Order : 9th April 2007.**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr. Rajesh Panwar with
Mr. S.K. Sankhla, for the appellants.
Mr. Anil Bachhawat, for the respondent No.3.

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This appeal against the award dated 13.11.2002 made by the Motor Accidents Claims Tribunal, Sojat in Claim Case No.47/1999 has been preferred by the claimants seeking enhancement over the amount of Rs. 3,91,600/- together with interest @ 9% per annum awarded by the Tribunal towards compensation on account of accidental death of Teja Ram, about 35 years of age and said to be working in Veterinary Hospital as 'Jaldhari', husband of the appellant No.1, father of the appellants Nos. 2 to 4, and son of the appellants Nos. 5 and 6.

This appeal was barred by limitation by 4 days and after notice, such delay in filing the appeal has been condoned on 07.03.2007 and the matter was ordered to be placed on 06.04.2007 for admission.

On the matter being taken up for motion-admission, learned counsel for the appellants submitted that

quantum of compensation awarded by the Tribunal with application of multiplier of 12 only on the basis of last drawn salary of the victim has fallen much on the lower side, however, in the circumstances of the case, the claimants shall be satisfied if some reasonable enhancement over the amount awarded by the Tribunal is allowed. Learned counsel for the insurer on instructions responded with the proposition that the respondent-insurer shall be agreeable for enhancement over the amount of award if pecuniary loss is calculated with application of multiplier of 16 but interest is allowed at the rate of 6% per annum from the date of filing of the claim application. Learned counsel for the appellants submitted that though the claimants have been deprived of the only bread-earner of the family and such enhancement would yet not be sufficient compensation but for the insurer having agreed for enhancement at this initial stage of appeal, the claimants shall agree for such modification.

In accord with consensus arrived at between them, learned counsel for the parties have placed on record the agreement for re-stating the award with application of multiplier of 16 while allowing interest @ 6% per annum from the date of filing of the claim application; and it has been prayed that on the basis of the agreement arrived at, the appeal may be disposed of.

Having examined the record of the case, where the victim was in 35 years of age and was in settled employment with Veterinary Hospital and was earning Rs.3,105/- per month as basic salary and D.A. at Rs.683/- and has left behind wife in 30 years of age, three children in 16, 14 and 10 years of age and the parents in 55-60 years of age; and where the Tribunal has proceeded to apply a multiplier of 12 on the observations that the dependants of the victim are villagers belonging to Sirvi community chiefly engaged in agriculture and looking to their need and social status, multiplier of 12 is sufficient, this Court is in no doubt that the Tribunal has proceeded on incorrect premise and the award amount remains lower than that of reasonable compensation.

The amount of compensation when calculated with application of multiplier of 16, as agreed, would only erase the obvious mistake committed by the Tribunal; and yet the ultimate amount to be received by the claimants might appear falling wee bit short of sufficient compensation particularly when the deceased was in a settled employment and no component towards future prospects is being provided. However, looking to the overall fact situation of the case, time elapsed in this litigation (claim application filed on 07.05.1999 in relation to the incident of 12.02.1999), the age of children of the deceased, and other contingencies, this court is of opinion

that in the ultimate analysis, although the settlement proposal is of moderate enhancement, yet shall be conducive to rehabilitate the claimants, particularly the children, and shall meet the ends of justice; hence, deserves to be approved; and this appeal deserves to be disposed of accordingly while dispensing with service on other proforma respondents.

The insurer concerned has indeed been discreet in its approach in agreeing for enhancement and in settling out the matter in appeal at its threshold instead of contesting just for the sake of it.

Taking the multiplicand at Rs.30,300/- as adopted by the Tribunal and applying the multiplier of 16, pecuniary loss comes to Rs.4,84,800/-. Retaining other amount of Rs.28,000/- allowed by the Tribunal towards general damages, the award of compensation comes to Rs.5,12,800/-, and is rounded up to Rs.5,13,000/-.

Accordingly, this appeal is partly allowed and the award of compensation as made by the Tribunal is modified and, instead, the claimants are allowed compensation in the sum of Rs.5,13,000/- together with interest @ 6% per annum from the date of filing of the claim application.

It shall be required of the insurer to deposit the amount now payable under the modified award, of course after adjusting the amount already paid/deposited, within 30

days from today with the Tribunal. It is also considered appropriate and hence ordered that the amount now to be deposited by the insurer shall be divided equally amongst the three children of the deceased and shall be placed in Monthly Income Scheme of Post Office in their respective name for a period of 6 years.

There shall be no orders as to costs of this appeal.

(DINESH MAHESHWARI), J.

Mohan/